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DEPARTMENT OF ENERGY
Federal Energy Regulatory Commission

[Docket No. Ic14-2-000]

Commission Information Collection Activities (Ferc-919); Comment Request

AGENCY: Federal Energy Regulatory Commission.

ACTION: Comment request.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 USC 3507(a)(1)(D), the Federal Energy Regulatory Commission (Commission or FERC) is submitting the information collection FERC-919 (Market Based Rates for Wholesale Sales of Electric Energy) to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission issued a Notice in the Federal Register (78 FR 62006, 10/11/2013) requesting public comments. FERC received no comments on the FERC-919 and is making this notation in its submittal to OMB.

DATES: Comments on the collection of information are due by [Insert date 30 days after publication of this Notice in the Federal Register].

ADDRESSES: Comments filed with OMB, identified by the OMB Control No. 1902-0234, should be sent via email to the Office of Information and Regulatory Affairs: oir_submission@omb.gov. Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202-395-4718.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission, identified by the Docket No. IC14-2-000, by either of the following methods:

- eFiling at Commission's Web Site: <http://www.ferc.gov/docs-filing/efiling.asp>.
- Mail/Hand Delivery/Courier: Federal Energy Regulatory Commission,

Secretary of the Commission, 888 First Street, NE, Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: <http://www.ferc.gov/help/submission-guide.asp>. For user assistance contact FERC Online Support by e-mail at ferconlinesupport@ferc.gov, or by phone at: (866) 208-3676 (toll-free), or (202) 502-8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at <http://www.ferc.gov/docs-filing/docs-filing.asp>.

FOR FURTHER INFORMATION: Ellen Brown may be reached by e-mail at DataClearance@FERC.gov, by telephone at (202) 502-8663, and by fax at (202) 273-0873.

SUPPLEMENTARY INFORMATION:

Title: Market Based Rates for Wholesale Sales of Electric Energy

OMB Control No.: 1902-0234

Type of Request: Three-year extension of the FERC-919 information collection requirements with no changes to the reporting requirements.

Abstract: The FERC-919 is necessary to ensure that market-based rates charged by public utilities are just and reasonable as mandated by Federal Power Act (FPA) sections 205 and 206. Section 205 of the FPA requires just and reasonable rates and charges. Section 206 allows the Commission to revoke a seller's market-based rate authorization if it determines that the seller may have gained market power since it was originally granted market-based rate authorization by the Commission.

In 18 Code of Federal Regulations (CFR) Part 35 Subpart H¹, the Commission codifies standards for use in the Commission's determination of whether a wholesale seller of electric energy, capacity, or ancillary services qualifies for obtaining and retaining market-based rate authority. Subpart H mandates that sellers submit market power analyses and related filings.

Horizontal Market Power Analysis

Market power analyses must address both horizontal and vertical market power. To demonstrate lack of horizontal market power, the Commission requires two indicative market power screens: the uncommitted pivotal supplier screen (which is based on the annual peak demand of the relevant market) and the uncommitted market share screen applied on a seasonal basis. The Commission presumes sellers that fail either screen to have market power and such sellers may submit a delivered price test analysis to rebut the presumption of horizontal market power. If a seller fails to rebut the presumption of horizontal market power, the Commission sets the just and reasonable rate at the default

¹ Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities, Order No. 697, 72 Fed. Reg. 39,904 (Jul. 20, 2007), FERC Stats. & Regs. ¶ 31,252 (2007) (Final Rule).

cost-based rate unless it approves different mitigation based on case-specific circumstances. When submitting horizontal market power analyses, a seller must use the form provided in Appendix A of Subpart H and include all materials referenced.

Vertical Market Power Analysis

To demonstrate a lack of vertical market power to the extent that a public utility with market-based rates, or any of its affiliates, owns, operates or controls transmission facilities, it must:

- Have on file a Commission-approved Open Access Transmission Tariff²
- Demonstrate that neither it nor its affiliates can erect other barriers to entry
- Submit a description of its ownership or control of, or affiliation with an entity that owns or controls:
 - Intrastate natural gas transportation, intrastate natural gas storage or distribution facilities
 - Sites for generation capacity development; and physical coal supply sources and ownership or control over who may access transportation of coal supplies
- Make an affirmative statement that it has not erected and will not erect barriers to entry into the relevant market

Asset Appendix

² Burden reported separately in information collections FERC-516 (OMB Control Number: 1902-0096) & FERC-917 (OMB Control Number: 1902-0233)

In addition to the market power analyses, a seller must submit an asset appendix with its initial application for market-based rate authorization or updated market power analysis, and all relevant change in status filings. The asset appendix must:

- List, among other things, all affiliates that have market-based rate authority and identify any generation assets owned or controlled by the seller and any such affiliate
- List all generation assets owned (clearly identifying which affiliate owns which asset) or controlled (clearly identifying which affiliate controls which asset) by the corporate family by balancing authority area, and by geographic region, and provide the in-service date and nameplate and/or seasonal ratings by unit
- Must reflect all electric transmission and natural gas intrastate pipelines and/or gas storage facilities owned or controlled by the corporate family and the location of such facilities³

Triennial Market Power Analysis Update

Sellers that own or control more than 500 megawatts of generation and/or that own, operate or control transmission facilities, are affiliated with any entity that owns, operates or controls transmission facilities in the same region as the seller's generation assets, or with a franchised public utility in the same region as the seller's generation assets, are required to file updated market power analyses every three years. The updated market power analyses must demonstrate that a seller does not possess horizontal market power.

³ see Subpart H, Appendix B for standard form

Change in Status Filings

The Commission requires authorized market-based rate sellers to file any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-rate authority.⁴ Notices of change in status must be filed no later than 30 days after the change in status occurs. The Commission requires that each seller include an appendix identifying specified assets with each pertinent change in status filing. Change in status filings include, but are not limited to:

- 1) a net increase of 100 MW or more in ownership or control of generation capacity;
- 2) affiliation with an entity not disclosed in the application for market-based rate authority that owns or controls generation, transmission, or has a franchised service area; or
- 3) the acquisition of control of any site(s) for new generation capacity (described in the Quarterly Land Acquisition section below).

Exemptions from Submitting Updated Market Power Analyses

Wholesale power marketers and wholesale power producers that are not affiliated with franchised public utilities or transmission owners, that do not own transmission, and that do not, together with all of their affiliates, own or control more than 500 MW of generation in the relevant region are not required to submit updated market power analyses. The Commission determines which sellers are in this category through information filed by the utility either when the seller files its initial application for

⁴ 18 CFR 35.42.

market-based rate authorization or through a separate filing made to request such a determination.

Quarterly Land Acquisition Reports

FERC also requires that all entities with market-based rate authorization report on a quarterly basis,⁵ the acquisition of control of any site(s) for new generation capacity development for which site control has been demonstrated in the interconnection process and for which the potential number of megawatts that are reasonably commercially feasible on the site(s) for which new generation capacity development is equal to 100 megawatts or more.

The market power analyses help to inform the Commission as to whether entities have market power and whether sellers with market-based rate authority are only able to charge rates that are just and reasonable.

Type of Respondents: Public utilities, wholesale electricity sellers

*Estimate of Annual Burden*⁶: The Commission estimates the total Public Reporting Burden for this information collection as:

Market Power Analysis in FERC-919: Market Based Rates for Wholesale Sales of Electric Energy					
New Applications for Market-based Rates Requirements	Number of Respondents (A)	Number of Responses Per Respondent (B)	Total Number of Responses (A)x(B)=(C)	Average Burden Hours per Response (D)	Estimated Total Annual Burden (C)x(D)
35.37(a)]	213	1	213	250	53,250

⁵ All other change in status reports must be filed no later than 30 days after the change in status occurs. (18 CFR 35.42)

⁶ Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

Triennial market power analysis in seller updates [18 CFR 35.37(a)]	83	1	83	250	20,750
Quarterly land acquisition reports [18 CFR 35.42(d)]	373	2.15	802	4	3,208
Change in status reports [18 CFR 35.42]	237	1	237	34.75	8,236
TOTAL					85,444

The total estimated annual cost burden to respondents is \$7,268,721 [85,444 hours * \$85.07⁷) = \$7,268,721]

Comments: Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

⁷ The Commission staff calculated this figure using an average of salaries (including benefits: <http://www.bls.gov/news.release/ecec.nr0.htm>) between three occupational categories (http://bls.gov/oes/current/naics2_22.htm):

- Economist: \$67.57/hour
- Electrical Engineer: \$59.62/hour
- Lawyer: \$128.02/hour

$(\$67.57 + \$59.62 + \$128.02) \div 3 = \$85.07/\text{hour}$

Dated: December 30, 2013

Kimberly D. Bose,
Secretary.

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